IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE CRIMINAL JURISDICTION

CRIMINAL APPEAL NO.307 OF 2003

Shri. Sadu Janu Wagh,
Age 42 years. Occ. Labour,
Indian Inhabitant,
Residing at Gargaon, Tal. Wada,
District- Thane.
(At present in Jail at Kolhapur).
..Appellant.

Vs.

The State of Maharashtr
(Through Wada Police Station)
..Respondent.

Mr.M.R.Dehspande, Advocate for the Appellant appointed by Legal Aid Committee.

Mrs. U.V.Kejriwal, A.P.P. for the State.

CORAM: J.N. PATEL &
R.S. MOHITE, JJ.
DATED :22ND JANUARY, 2007.

ORAL JUDGMENT (Per R.S. MOHITE, J.) :

1. This is an appeal preferred by the appellant-Sadu Janu Wagh (hereinafter referred to as "accused") impugning a Judgment and order passed by the II Adhoc Additional District & Sessions Judge, Thane dated 8.1.2003 in Sessions Case No.132 of 2002. By the impugned Judgment and order the Trial Court has convicted the accused for an offence punishable under Section-302 of the Indian Penal Code and sentenced him

to suffer imprisonment for life and to pay a fine of Rs.2500/-, in default to suffer further rigorous imprisonment for a period of six months.

2. The brief facts of the prosecution case are as under:

a) That, 20 years prior to the incident which occurred in the night between 6.11.2001 and 7.11.2001, the accused was married to the deceased Mandabai. As deceased-Mandabai was not begetting a child, the accused entered into a second marriage with the complainant-P.W.No.1-Kalubai. Kalubai was a close relative of the accused. Even though the accused had entered into a second marriage, the deceased used to cohabit with him in the same house. In the morning, they used to go work in the field together. At the relevant time, they were working in the field of one Mr.Pashte which was situated at a distance of about 15-minutes walk from the village. On 6.11.2001, at about 7.00a.m. in the morning, accused and deceased Mandabai had gone to work in the field of Mr. Pashte. The complainant Kalubai had remained at home since she had small children to attend to. The accused and the deceased did not return home in the night. On 7.11.2001, at about 6.00a.m., the accused returned home

carrying the body of the deceased on his shoulder. The deceased had suffered several injuries including incised injuries on her forehead. On returning home, he informed the complainant that he had killed the deceased and further told her that he would similarly kill her also. At that time, the accused was having a sickle in his hand. The complainant was afraid that the accused would beat her in a similar manner. After some time the accused left home and went away towards the village Jamghar. The complainant and her father then went to the police Patil and thereafter, they went to Wada Police Station. P.W.No.1- Kalubai then lodged a First Information Report which is proved by the prosecution on record and is exhibited as Exh.10.

b) The F.I.R. lodged by P.W.No.1 Kalubai was recorded by P.W.No.3 A.P.I. Sahaji Ghadge. After recording the F.I.R. he commenced investigation. He visited the spot of the incident and the house of the accused and prepared a spot panchanama. He prepared a rough sketch of the place of incident (Exh.19). He then prepared an Inquest panchanama of the dead body (Exh.17) and thereafter referred the dead body of the deceased Mandabai to Wada Rural Hospital, Wada. He found that the accused was absconding. He recorded the statement of other witnesses including that of

P.W.No.4-Indira who was the aunt of the deceased. The accused was found in an adjoining forest and he was arrested. Upon his arrest, the accused agreed to produce a sickle and therefore, a memorandum was recorded and in pursuance thereof a sickle was discovered from the house of the accused. It was found in a bag hung on a peg. The said sickle was stained with blood and it was seized under panchanama. The Investigating Officer then seized the blood stained earth from the spot i.e. residence of the accused. He also seized the clothes of the accused. All these seized articles were sent to Forensic Laboratory for an analysis. The Investigating Officer then collected the post mortem report. The post mortem report indicated that the deceased had suffered the following external injuries.

1) Incised wound over centre of the forehead, size 3.5 cms. x 0.5 cms. x bone deep.

2) Contusion over left lower back size 6 x 4 cms.

3) Contused abrasion on left shoulder measuring 4 x 3 cms.

4) Contused abrasion on right shoulder measuring 3 x 3cms.

5) Contused abrasion on right ankle joint measuring 1 x 1 cms.

6) Contused abrasion on left knee at lateral aspect measuring 4 x 3cms.

7) Abrasion on right knee measuring 4 x 2 cms.

. The report further indicated that the deceased had suffered the following corresponding internal injuries.

1) Haematoma on left parietal region, measuring 6 x 4 cms.

2) Haematoma on frontal region in relation to injury No.1 measuring 4 x 4 cms.

3) Depression seen on centre of frontal bone in relation to injury No.1 measuring 3 x 0.5 cms.

4) Laceration on left temporal lobe on frontal region.

5) 11 rib fracture on left side lateral aspect.

6) Left kidney capsular bleeding was present.

c) In due course, the Chemical Analyser's report was also received. Same indicated that blood stains were found on the full shirt and lungi seized from his person. The blood group on the said shirt and Lungi was of blood Group-B. The blood on the saree and the blouse of the deceased was also found to be of blood Group-B. The blood on the sickle said to have been recovered at the behest of the accused was found to be of human. After completion of the investigation, the Investigating Officer filed a charge-sheet against the accused.

3) At the stage of the trial, the prosecution examined in all five witnesses. P.W.No.1-Kalubai Wagh was examined as the first informant. P.W.No.4-Indira Wagh was examined as she spoke about extra judicial confession said to have been made by the accused to her. P.W.No.2- Chandrakant was examined as a panch witness to prove the discovery of the sickle at the

behest of the present accused. P.W.No.5 Dr.Divya Sing was examined as a Doctor who had conducted the post mortem and P.W.No.3 A.P.I. Shahaji Ghadge was examined as the Investigating Officer.

4) After completion of the prosecution evidence, the Trial Court recorded the statement of the accused under Section-313 of the Code of Criminal Procedure. In his statement, the accused denied the prosecution case and came out with a positive version to the effect that he and the deceased-Mandabai had both consumed alcohol on the way back from the field and under the influence of alcohol, the deceased had fallen from a bridge and sustained the injuries found on her person.

5) On considering all the ocular and documentary evidence produced by the prosecution, the Trial Court was pleased to convict and sentence the accused as aforesaid.

6) The Advocate appointed by the Legal Aid Committee for the applicant contended that this was a case of no evidence against the accused as the circumstantial evidence which was adduced was either not proved or of very weak in nature. He contended that the external injuries Nos. 2 to 7 were simple in

nature and he relied upon the evidence of the Doctor elicited in his cross examination, to the effect that external injury No.1 was possible by fall on sharp edged stone from a height of 4ft. He contended that the police had not conducted a proper investigation and failed in their duty in not examining the exact spot where the incident had taken place, in order to eliminate the possibility of injury being caused by fall on a sharp edged stone. He relied upon a further admission of the Doctor that the fracture of 11th rib could also be possible by falling.

7) As against this, the learned prosecutor supported the reasoning of the trial court as contained in the Judgment and order. She pointed out that there was sufficient circumstantial evidence against the present accused. That, the complainant Kalubai had no reason to falsely implicate the accused. That, her version was corroborated by the testimony of P.W.No.4 Indira Wagh who spoke about the extra judicial confession made by the accused to her and further corroborated by the medical as well as forensic evidence on record.

8) We have perused the entire record and we find that there is no substance in the appeal and the same

deserves to be dismissed for the following reasons.

a) The record indicates that in his statement under Section-313 of the Cr.P.C., the accused came out with a positive case admitting his presence when the deceased Mandabai suffered injuries. His case is that the deceased fell down from a bridge under the influence of liquor finds no corroboration in the medical evidence.

. The contents of the stomach were not found smelling of alcohol.

. There are as many as seven internal injuries on different parts of the body but there was no cross examination on the point as to whether all these wounds could have been simultaneously caused by a fall from 3 to 4 ft.

. The description of the incised wound indicate that the same could have been caused by a sickle.

b) Apart from this there is absolutely no reason to disbelieve the evidence of P.W.No.1 Kalubai Wagh to the effect that the accused disclosed to her that he had killed his wife Mandabai.

c) The cross examination of Kalubai indicates that she disclosed to the police while lodging her F.I.R. that the accused had killed Mandabai. Though, it is recorded that she could not assign any reason why the said disclosure did not find place in the F.I.R. The F.I.R. does indicate that the accused had disclosed to her that he had killed Mandabai. There is factually no omission in this regard in the F.I.R. There is nothing brought on record to show as to why Kalubai Wagh would falsely implicated the present accused. Her version that the accused disclosed to her that he killed Mandabai also stands corroborated by the evidence of Indira Wagh who is an aunt of the accused person and the mother of P.W.No.1-Kalubai Wagh. Indira Wagh speaks of the accused disclosing to her about his killing the deceased. There is nothing elicited in the cross examination of this witness to throw any doubt about her version.

10) P.W.No.5 Dr. Divya Sing had stated that the Injury No.1 which was fatal could have been caused by sharp edged weapon like sickle being article before the court. The Chemical Analyser’s report indicated human blood on the sickle. There was no reason for human blood to have been present on the sickle. The shirt and the lungi seized from the accused were found to

contain several blood stains of B- Group which was also the blood group found on the saree and the blouse of the deceased. The evidence of the Investigating Officer indicated that the accused had absconded after the incident and was arrested from the adjoining forest after two days.

11) In our view, the prosecution has proved the aforesaid several circumstances beyond reasonable doubt and the aforesaid circumstances form a complete chain which unerringly points at the guilt of the accused. In the circumstances, appeal stands dismissed.

(J.N. PATEL, J.)

(R. S. MOHITE, J.)